

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Torero	Team: Squad #1	CCRB Case #: 201905740	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/29/2019 9:00 PM	Location of Incident: Walgreens - 20 Astor Place	Precinct: 09	18 Mo. SOL 12/29/2020	EO SOL 8/15/2021	
Date/Time CV Reported Mon, 07/01/2019 12:49 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/01/2019 12:49 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Kelly Fitzpatrick	05228	964514	009 PCT
2. POM Carl Petrigno	22187	962688	009 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Lazarre	10710	964608	009 PCT
2. POF Erika Prado	07322	964710	009 PCT
3. POM Christophe Joyce	28319	945862	009 PCT
4. POM Vincent Lapenta	16805	957759	009 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Kelly Fitzpatrick	Discourtesy: Police Officer Kelly Fitzpatrick spoke discourteously to § 87(2)(b)	
B.POF Kelly Fitzpatrick	Force: Police Officer Kelly Fitzpatrick used physical force against § 87(2)(b)	
C.POM Carl Petrigno	Force: Police Officer Carl Petrigno used physical force against § 87(2)(b)	
D.POM Carl Petrigno	Abuse: Police Officer Carl Petrigno threatened to arrest § 87(2)(b)	
E.POF Kelly Fitzpatrick	Abuse: Police Officer Kelly Fitzpatrick failed to provide § 87(2)(b) with a business card.	
F.POM Carl Petrigno	Abuse: Police Officer Carl Petrigno failed to provide § 87(2)(b) with a business card.	

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB on July 1, 2019.

On June 29, 2019, § 87(2)(b) was involved in an altercation with a loss-prevention officer at a Walgreens located at 20 Astor Place in Manhattan. § 87(2)(b) called 911 to report that she had been assaulted. Police Officers Kelly Fitzpatrick and Carl Petrigno of the 9<sup>th</sup> Precinct arrived on scene. PO Fitzpatrick and PO Petrigno first spoke with the loss-prevention officer and then with § 87(2)(b) and the officers argued. During this argument, PO Fitzpatrick told § 87(2)(b) “You’re gonna calm the fuck down” (**Allegation A: Discourtesy**, § 87(2)(g)). PO Petrigno and PO Fitzpatrick took § 87(2)(b) to the ground and placed her in handcuffs (**Allegations B and C: Force**, § 87(2)(g)). § 87(2)(b) was taken to an ambulance to treat an injury sustained from her altercation with the loss prevention officer. After reviewing the store security footage, PO Petrigno informed § 87(2)(b) that the incident was a cross-assault and that if she chose to press charges against the loss-prevention officer, she would also be arrested (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) chose not to press charges and she was not arrested.

§ 87(2)(g)  
On November 6, 2020, the complaint was re-opened upon § 87(2)(b)'s request, regarding allegations that PO Petrigno and PO Fitzpatrick failed to provide her business cards (**Allegations E and F: Abuse of Authority**, § 87(2)(g)).

The CCRB obtained security camera footage from Walgreens, body-worn camera footage from PO Petrigno and PO Fitzpatrick, as well as Police Officers Christophe Lazarre, Erika Prado, Christopher Joyce, and Vincent Lapenta from the 9<sup>th</sup> Precinct (Board Review 01-09).

### Findings and Recommendations

#### **Allegation (A) Discourtesy: Police Officer Kelly Fitzpatrick spoke discourteously to § 87(2)(b).**

§ 87(2)(b) did not make any allegations of discourteous language. However, PO Fitzpatrick’s body-worn camera footage captured PO Fitzpatrick use discourteous language during this incident.

At 00:40 in the video player’s timestamp of PO Fitzpatrick’s body-worn camera footage, PO Fitzpatrick and PO Petrigno, who are both dressed in uniform, approach § 87(2)(b) who is on the phone in the vestibule of Walgreens. PO Petrigno waves to § 87(2)(b) and says, “Hi, ma’am.” § 87(2)(b) responds, “Yeah, I’m talking to the police.” PO Petrigno points to himself and says, “What do you think I am?” § 87(2)(b) says that the loss-prevention officer called PO Petrigno and PO Fitzpatrick, so they are there for him, and PO Fitzpatrick replies, “We got both calls.” PO Petrigno continues to speak to § 87(2)(b) but § 87(2)(b) does not hang up the phone. At 00:52, PO Fitzpatrick says, “Well that’s not a way that’s gonna start off very well for you.” At 00:55, PO Petrigno asks § 87(2)(b) to hang up the phone, and § 87(2)(b) shows PO Fitzpatrick her finger and says, “You see what he did to me?” PO Fitzpatrick responds calmly, “I’ll get you an ambulance if you want,” to which § 87(2)(b) responds, very quickly and seemingly with anger, “Yeah I want one.” PO Fitzpatrick then says (referring to the 911 operator), “She can’t help you as much as we can help you,” and § 87(2)(b) responds, “It’s a ‘he’ for your information.” Then at 01:04, § 87(2)(b) points toward the interior of the store, off to the left of PO Fitzpatrick, and shouts, “I just got punched in the eye by this man!” As § 87(2)(b) does this, she closes most of the distance between herself and PO Fitzpatrick. PO Fitzpatrick appears to grab § 87(2)(b)’s hand and at 01:07 tells § 87(2)(b) “You’re gonna calm the fuck down” (Board Review 01).

PO Fitzpatrick testified that she used the word “fuck” in this incident to serve a law-enforcement purpose, because in some instances it is better to meet people at their level in order to bring them down (Board Review 10).

NYPD Patrol Guide Procedure 200-02 states that officers must render their services with courtesy and civility (Board Review 11). DAO-DCT Case Number 2018-18951 (2019) found that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct, but that officers have a responsibility to act with decorum when interacting with the public. In that instance, when a couple was engaged in a verbal dispute with each other and spoke over an officer several times, the officer was not justified in raising her voice in the open area of a stationhouse and speaking discourteously towards them (Board Review 12).

§ 87(2)(g)

**Allegation (B) Force: Police Officer Kelly Fitzpatrick used physical force against** § 87(2)(b)

**Allegation (C) Force: Police Officer Carl Petrigno used physical force against** § 87(2)(b)

It is undisputed that PO Fitzpatrick and PO Petrigno placed § 87(2)(b) in handcuffs and that § 87(2)(b) resisted when they did so. § 87(2)(g)

§ 87(2)(b) testified that she was in the lobby of the store recounting the incident to police officers who had responded to the scene when she saw the loss-prevention officer move towards her bags, which were approximately four feet away from her. § 87(2)(b) moved forward and to her right, towards the loss-prevention officer, when PO Fitzpatrick told her, “Step back!” § 87(2)(b) said she had to watch the loss-prevention officer because he was trying to plant something, and officers took her to the ground and placed her in handcuffs. § 87(2)(b) stated that she did not go to the ground easily or willingly but was unable to describe how she was unwilling (Board Review 13).

At 2:00 into PO Fitzpatrick’s second body-worn camera footage recording, an already handcuffed § 87(2)(b) steps toward her bag and is told not to move, at which point she expresses concern that the loss-prevention officer is placing something in her bag (Board Review 06).

Both PO Petrigno and PO Fitzpatrick testified that the loss-prevention officer identified § 87(2)(b) as involved in the theft in progress to which they responded (Board Review 10, 14). PO Fitzpatrick testified that when she and PO Petrigno approached § 87(2)(b) § 87(2)(b) yelled at them and, while standing an arms-length from her, § 87(2)(b) waved her open hand in PO Fitzpatrick’s face multiple times (Board Review 10). PO Petrigno testified that § 87(2)(b) pointed her fingers in PO Fitzpatrick’s face and then jabbed her fingers towards PO Fitzpatrick while moving closer to her. PO Petrigno told § 87(2)(b) not to put her fingers in his partner’s face, and § 87(2)(b) pointed her fingers at PO Fitzpatrick again and her voice got louder. PO Petrigno did not recall exactly how close

§ 87(2)(b) was to PO Fitzpatrick but stated that she entered PO Fitzpatrick's personal space and was close enough to reasonably make a person uncomfortable. PO Petrigno stated that if a defendant or person on the street is coming within inches of an officer and pointing fingers at the officer, that is possibly a safety risk for officers (Board Review 14).

PO Fitzpatrick stated that she told § 87(2)(b) to keep her hands down or she would be placed in handcuffs. After PO Fitzpatrick said this, § 87(2)(b) continued to yell and was placed in handcuffs. In addition, the fact that they were in the vestibule meant § 87(2)(b) had easy access to an exit, which raised PO Fitzpatrick's concern for safety. PO Fitzpatrick did not recall who placed § 87(2)(b) in handcuffs or whose handcuffs were used. PO Fitzpatrick stated that § 87(2)(b) went limp and fell to ground on her stomach. § 87(2)(b) tightened her arms but officers eventually placed her arms behind her back. PO Fitzpatrick denied pushing § 87(2)(b) to the ground and stated that she did not believe any officer pushed her to the ground (Board Review 10). PO Petrigno stated that he and PO Fitzpatrick placed § 87(2)(b) in handcuffs and that two other officers on scene assisted them. § 87(2)(b) brought her arms close to her body and went limp, falling to her knees. The officers caught her to prevent her from falling further and guided her down to the floor. PO Petrigno denied that he or PO Fitzpatrick pushed § 87(2)(b) to the ground. § 87(2)(b) was handcuffed on the floor (Board Review 14).

At 1:03 in the video player's timestamp of PO Petrigno's body-worn camera footage, he and PO Fitzpatrick are speaking to § 87(2)(b) in the vestibule of the Walgreens when § 87(2)(b) steps towards the entrance to the Walgreens, pointing her finger, and shouts "I just got punched in the eye by this man!" At 1:06, § 87(2)(b) looks towards PO Fitzpatrick and says, "Hey don't touch me." PO Petrigno tells § 87(2)(b) not to point her fingers in his partner's face, and § 87(2)(b) turns to him and says, "Don't mess with me." At 1:14 in PO Fitzpatrick's first body-worn camera recording, after § 87(2)(b) says, "Don't mess with me," PO Fitzpatrick says, "Do you wanna go in handcuffs? Cause that's your next option." § 87(2)(b) and PO Fitzpatrick continue to argue with one another, and at 1:29 in PO Petrigno's footage, PO Fitzpatrick asks § 87(2)(b) to hang up the phone and talk with them. § 87(2)(b) says no, but then lowers her phone from her face and is no longer speaking on the phone. At 1:31 in PO Petrigno's footage PO Fitzpatrick says, "You're gonna go in handcuffs," and PO Petrigno says, "You're gonna go in handcuffs because you're not complying with us." PO Fitzpatrick tells § 87(2)(b) she's being non-compliant, and § 87(2)(b) says, "I'm being non-compliant?" and then, louder, "I didn't even have to stay here! Nothing was done here! Except I got assaulted!" At 1:56 in PO Fitzpatrick's footage, § 87(2)(b) asked if witnesses who ran off called 911. PO Fitzpatrick says, "Exactly." § 87(2)(b) says, "Great," and then PO Fitzpatrick says, "All right, put her in cuffs." § 87(2)(b) is shouting and gesturing with her hands towards the store and in the general direction of PO Fitzpatrick. After PO Fitzpatrick says to place § 87(2)(b) in handcuffs, She and PO Petrigno move toward § 87(2)(b) and she shouts, "Don't touch me!" and takes a step backwards. Officers and § 87(2)(b) struggle, and this appears to cause PO Fitzpatrick's body-worn camera to turn off. § 87(2)(b) goes to the ground. Officers' body-worn camera footage does not clarify if § 87(2)(b)'s own actions, or the officers' use of force, is what caused her to fall to the ground (Board Review 01, 03).

Walgreens' security camera footage shows, at 8:45:41 PM, PO Fitzpatrick takes a step towards § 87(2)(b). § 87(2)(b) continues to gesture with her hands but stays in the same place the entire time. At 8:45:52, PO Petrigno and PO Fitzpatrick move to place § 87(2)(b) in handcuffs. § 87(2)(b) takes a step backwards, and as officers grab her, she falls to her knees. § 87(2)(b) appears to attempt to wrestle herself free of the officers' grasp, and at 8:46:00 PM the officers appear to place § 87(2)(b) on the ground on her stomach, although it is difficult to see because the loss-prevention officer is partially obscuring the camera's view (Board Review 02).

NYPD Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of the service or another person, or when it is reasonable to place a person in custody or to prevent escape from custody. (Board Review 15).

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Carl Petrigno threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified that, while she was being treated in an ambulance, a male officer approached her and said, “Here are your options. You can both walk away from the situation, or you can press charges and he will press charges and you will both go downtown.” § 87(2)(b) chose not to press charges because she did not want to go to jail (Board Review 13).

PO Petrigno testified that in reviewing security camera footage from the Walgreens, he saw that § 87(2)(b) had swung her bag at the loss-prevention officer, and the loss-prevention officer had then struck § 87(2)(b). PO Petrigno told § 87(2)(b) that the situation was a cross assault, and either both she and the loss-prevention officer could press charges and be arrested, or they could both decline to press charges. PO Petrigno testified that a cross assault occurs when two people cause injury to each other and are both at fault, and both the loss-prevention officer and § 87(2)(b) had minor injuries (Board Review 14).

Security camera footage from the Walgreens captured the encounter between § 87(2)(b) and the loss-prevention officer, who is wearing a white t-shirt, blue pants, red sneakers, and a light-blue backpack. Starting at 8:39 PM and continuing until 8:40 PM, according to the video’s running clock, § 87(2)(b) and the loss-prevention officer appear to be arguing verbally, and this interaction escalates into a physical altercation. Both § 87(2)(b) and the loss-prevention officer strike each other during the fight (Board Review 02). At 20:14 in PO Petrigno’s body-worn camera footage, he appears to be watching the security camera footage of the incident. He watches the footage and, at 21:29, PO Petrigno is on the phone and tells his interlocutor that “It looks like a cross” (Board Review 03).

New York State Penal Law § 120.00 states that a person is guilty of assault in the third degree when that individual, with intent to cause physical injury to another person, causes such injury to such person; recklessly causes physical injury to another person; or, with criminal negligence, causes physical injury to another person by means of a deadly weapon or a dangerous instrument (Board Review 16).

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Kelly Fitzpatrick failed to provide § 87(2)(b) with a business card.**

**Allegation (F) Abuse of Authority: Police Officer Carl Petrigno failed to provide § 87(2)(b) with a business card.**

In a phone call on September 10, 2020, § 87(2)(b) alleged that officers had not provided her with their business cards during this incident (Board Review 17). Neither PO Fitzpatrick nor PO Petrigno recalled if they provided a business card to § 87(2)(b). Both officers stated that they would have been required to provide a business card if § 87(2)(b) had asked them, but that there are no scenarios in which officers are required to provide their business card if a civilian does not ask (Board Review 18-19). PO Petrigno testified that, after the loss prevention officer told officers that § 87(2)(b) had stolen items from the Walgreens he observed injuries on the loss prevention officer, he suspected that § 87(2)(b) had shoplifted and considered her under arrest (Board Review 14). PO Fitzpatrick testified that officers handcuffed § 87(2)(b) because they suspected that § 87(2)(b) had stolen from the Walgreens (Board Review 10).

From 26:45 in PO Petrigno's video player's timestamp to the end of the footage, which is 30 minutes and 37 seconds long, PO Petrigno speaks to § 87(2)(b) while she is in an ambulance and where § 87(2)(b) ultimately decides not to press charges against the loss prevention officer (Board Review 03). At 21:06 in the video player's timestamp of PO Fitzpatrick's BWC footage, she is standing outside the ambulance as PO Petrigno speaks to § 87(2)(b) (Board Review 06). None of the officers' body-worn camera footage captures either of them offering their business cards to § 87(2)(b) (Board Review 01, 03, 06). § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

New York City Administrative Code § 14-174 states that when an officer concludes a pedestrian stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter at will, that officer is required to offer a business card to that individual if that individual is not arrested or issued a summons, unless, among other exceptions, exigent circumstances require immediate action by such officer (Board Review 20).

§ 87(2)(g)

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#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to two CCRB complaints and has been named as a victim in ten allegations (Board Review 21):
  - § 87(2)(b)
- PO Kelly Fitzpatrick has been a member-of-service for three years and this is the first CCRB complaint to which she has been a party (Board Review 22).
- PO Carl Petrigno has been a member of service for four years and this is the first CCRB complaint to which he has been a party (Board Review 23).

## Mediation, Civil and Criminal Histories

- On November 6, 2019, this case was sent to mediation and on December 2, 2019, the case was returned to investigation as the complaint was no longer eligible for mediation.
- As of April 8, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 24).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 1

Investigator: Sebastian Torero Inv. Sebastian Torero 12/4/2020  
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda      \_\_\_\_\_      12.11.20  
Signature                  Print Title & Name                  Date

Reviewer: \_\_\_\_\_

Signature                      Print Title & Name                      Date